IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5441 OF 2007

Ranjitsinha Moolji .... Petitioner

versus

Kalpataru Apartments Co-op.
Hsg. Sty. Ltd. & ors ..... Respondent.

Shri K.D. Shah for the petitioner.
Shri G.N.Salunkhe for Respondent no.1.
Shri P.S.Dani for Respondent nos. 2 to 5.

CORAM; A.P. DESHPANDE, J.
DATED; 21ST AUGUST, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

1. The present petitioner is a tenant in occupation of a flat owned by one Mrs. Sushila Pandit, since deceased, initially at a monthly rent of Rs.1200/-, which during passage of time was increased to Rs.3000/- per month. The respondent no.1 is a housing society. Late Mrs. Sushila Pandit expired on 10-8-1985 leaving behind her, respondent nos. 2 to 5 as her heirs. The respondent no.1 society filed a dipsute in the Co-operative Court being Dispute

No.CC-IV-944/88 seeking to evict the petitioner herein from the given flat. The reason being that the flat has been leased out to a non-member which according to the first respondent was against the bye-laws of the society. The petitioner filed written statement wherein though it was pleaded that the society and the resposdent nos.2 to 5 are in collusion, no material particulars of fraud and collusion were set out. According to the petitioner, he did not have the details or material particulars in regard to the fraud or collusion between the respondent no.1 on one hand and respondent nos. 2 to 5 on the other hand. After the evidence commenced, the manager of the respondent no.1 was examined by the society. During the cross examination of the Manager, he revealed the material particulars and also placed on record the minutes of the extra ordinary general body meeting of the members of the respondent no.1 society held on 11-1-1998. Resolution No.E record thus:

> "It was decided to authorise Mr. P.R.Shetty the Manager to attend the said matter on behalf of the society, subject to Mrs. Pandit accept the following terms and conditions:
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> i) To pay Rs.five lacs or 5% of the flat value

which ever is higher at the time of settlement.

ii) To pay Mr. Prakash Shetty a sum of Rs. 1000/- per month as a monthly fees for attending the court. The payment has to be directed through the society.

iii) The matter should not delay for more than three years from the date hereof.

iv) To give an undertakaing on a stamp paper of Rs.10/- mentioning all the above terms and conditions and duly signed by Sharmila Pandit and others."

2. As the petitioner came to know that the society is prosecuting the dispute with a view to evict the petitioner and hand over the possession to the respondent nos. 2 to 5 in consideration of payment of more than Rs.5 lacs and as the details in regard to collusion or fraud in filing of the suit were brought on record during the evidence of the Manager, the petitioner immediately moved an application for amendment of the plaint with a view to furnish the particulars in regard to fraud or collusion between

respondent no.1 on one hand and the respondent nos. 2 to 5 on the other hand. The said amendment application was opposed and the trial court rejected the same mainly on the ground of delay and by placing reliance on the proviso to Order 6 Rule 17 of CPC. The trial court held that there is no need to amend the plaint. The order passed by the Co-operative Court was challenged by filing an appeal before the Co-operative Appellate Court and the Co-operative Appellate Court has dismissed the appeal. Hence this petition. The Appellate Court has held that as the dispute pertains to the year 1987 the same cannot be prolonged any further.

3. The learned counsel for the petitioner has submitted that the law obliges the plaintiff to furnish material particulars in regard to fraud and collusion and as the petitioner was not aware about the particulars thereof the same are not specifically pleaded in the plaint. The learned counsel expresses his apprehension that on account of non furnishing of material particulars of fraud or collusion, his dispute may fail. It is submitted that the plaintiff/disputant came to know all the particulars in regard to fraud and collusion only when the society’s witnesses was cross examined and the

resolution was placed on record by him which goes to indicate that for consideration of sum of more than five lacs, the society is prosecuting the dispute with a view to evict the petitioner for the benefit of respondent nos. 2 to 5 and not with a view to seek compliance of the bye law. The learned counsel further submits that the dispute in no way would be prolonged as the evidence has already come on record. The anxiety of the petitioner is to furnish better particulars of fraud and collusion between the resposndents.

4. Per contra the learned counsel appearing for the respondents have supported the impugned orders by contending that the dispute is of the year 1987-88 and hence indulgence at this stage is uncalled for. At the outset it is to be noted that as the present dispute has been filed much prior the coming in force of the 2002 amendment of CPC, the proviso to Order 6 Rule 17 of CPC has no application to the facts of the present case. Thus the trial court was in error in rejecting the application by placing reliance on the amended provision of Order 6 Rule 17. In the facts narrated hereinabove, I am of the clear view that the petitioner is only desirous of elaborating the plea already taken in the written statement by furnishing

material particulars of fraud and collusion, in the absence of which the petitioner's case may be prejudiced. Allowing the amendment, in my opinion, would advance cause of justice and avoid miscarriage of justice. I am of the view that as the petitioner came to know of the facts only when the witness for the society Mr.Shetty produced on record the Minutes of the meeting that the petitioner could know the details and particulars in relation to the plea of fraud and collusion. Reading of the entire Resolution No.e also suggests that the society agreed to support respondent no.2 to 5 by evicting the petitioner as the respondent nos. 2 to 5 agreed to pay the given sum of money. Thus without expressing any opinion on merit of the matter, I deem it appropriate to allow the amendment application and I proceed to allow the same. The impugned order passed by the Co-operative Court and the Maharashtra State Co-operative Appellate Court dated 19-4-2006 are quashed and set aside. The amendment application filed by the petitioner is allowed. Rule made absolute in the above terms. Having regard to the pendency of the dispute for a period of about 16 years, I deem it appropriate to direct the Co-operative Court to proceed to decide the dispute as expeditiously as possible and at any rate within a period of six months from today.

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